ALJ/WAC/sbf PROPOSED DECISION Agenda ID #11902 (Rev. 1)

Adjudicatory

3/21/2013 Item 8

Decision PROPOSED DECISION OF ALJ COLBERT (Mailed 2/11/2013)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Maria V. Lawrence,

Complainant,

vs.

Case 11-04-018 (Filed April 25, 2011)

Pacific Gas and Electric Company (U39E),

Defendant.

DECISION DISMISSING THE COMPLAINT OF MARIA V. LAWRENCE

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DECISION DISMISSING THE COMPLAINT OF MARIA V. LAWRENCE

1. Summary

This Decision denies the requested relief and dismisses the complaint filed by Maria V. Lawrence against Pacific Gas and Electric Company (U39E).

Case 11-04-018 is closed.

1.1. Parties

Maria V. Lawrence (Ms. Lawrence or Complainant) owns and resides at 138 Virginia Court, Alamo, California (the Property). Complainant is a customer of Pacific Gas and Electric Company (PG&E or Defendant).

Defendant is a provider of electricity and natural gas service and is an investor-owned public utility under the jurisdiction of the California Public Utilities Commission.

2. Factual and Procedural Background

Maria V. Lawrence (Ms. Lawrence or Complainant) originally filed a complaint against Pacific Gas and Electric (PG&E) on February 25, 2010, (Case (C.) 10-02-026), alleging a number of wrongful actions by the Defendant in relation to the initial placement and subsequent relocation of gas and electric lines on her property. On April 25, 2011, Complainant filed the instant complaint alleging that the Defendant improperly collected the Income Tax Component of Contribution (ITCC) in connection with the relocation of an electric service line on her property; the line relocation was one of the subjects/issues of C.10-02-026. On that same date, Complainant also filed a related complaint, C.11-04-019.

Ms. Lawrence's home was built in 1978. She purchased it from the original owner in 1985. At the intersection of a private drive and the east-west property line separating Ms. Lawrence's property and the adjacent parcel, the developer

granted a 10-by-15-foot easement in gross, on which PG&E placed a 75 kilovolt ampere transformer to furnish electric service to the Property and adjacent lot. It is from this point at the far southwest end of the Property that electric service was extended north to Ms. Lawrence's residence.

In 2005 Ms. Lawrence planned to build a freestanding garage to the south of her house, between the house and the transformer, and had a set of plans prepared for the construction. She requested that PG&E relocate her utility lines as part of the anticipated work, and paid PG&E \$1,000, the required fee for engineering the job. She also engaged a contractor, who dug a trench for relocating the lines. However, she ultimately cancelled the contract with PG&E for relocation of its utility lines and deferred the project for reasons that are not material to this complaint.

In 2009 Ms. Lawrence renewed her plans to build the garage, and again applied to PG&E to reroute the utility lines, resubmitting her 2005 design for the work. Ms. Lawrence submitted the application for the new alignment to PG&E in 2010. The fee for the relocation of the electricity line was \$6,805.79 plus the ITCC of 34%, or \$2,313.97, for a total cost of \$9,119.75.1 It is the \$2,313.97 ITCC that is the subject of the instant complaint.

The Complainant seeks to require Defendant to refund all moneys received from customers (including her) for ITCC or produce all records of the customers charged pursuant to the ITCC in order to determine if the charges were correct and applicable. She also seeks to have Defendant pay a substantial

¹ Complaint, Exhibit A.

fine for charging customers under ITCC and have the Commission require Defendant to end its ITCC billing practices.

PG&E asserts that ITCC was properly collected as a matter of law. PG&E contends that it is required to collect Federal Income Taxes on "Contributions," which include "cash, services, facilities, labor, property and related income taxes provided by a person or agency to PG&E."² Defendant asserts that the Complainant's claims on behalf of other customers are outside of the scope of the proceeding. Defendant requests the Commission find that the Complainant has failed to state a claim upon which relief can be granted, deny her claims and dismiss the complaint.³

On January 13, 2012, PG&E filed an Issues Brief and a Motion for Request for Official Notice. Complainant also filed her Issue Brief on January 13, 2012. On March 14, 2012 PG&E filed a Motion to Strike Portions of Complainant's Issue Brief. On March 22, 2012, Complainant filed a Response to the Motion to Strike. On March 22, 2012 the Commission issued a decision extending the statutory deadline of the proceeding to October 31, 2012. On October 25, 2012 the statutory deadline was extended to January 31, 2013. On January 24 the deadline was extended to May 31, 2013.

3. Scope of Proceeding

A prehearing conference (PHC) was held on August 10, 2011. The Assigned Commissioner's Scoping Memo and Ruling (Scoping Memo), in the instant proceeding, was issued on December 7, 2011. The Scoping Memo

² PG&E Answer to Complaint at 1.

³ PG&E Issue Brief at 12.

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determined that there was one primary and one-sub issue to be addressed in the proceeding:

- 1. Did the collection of the Income Tax Component of Contribution, by the Defendant from the Complainant, in connection with the relocation of the Complainant's electric service line, violate any Commission rule, statute, order or applicable tariff?
- 2. Does Complainant have any standing to bring an action before the Commission on behalf of other PG&E customers who were subject to the Income Tax Component of Contribution?

4. Motion to Strike

As previously noted, the Defendant has filed a Motion to Strike Portions of Complainant's Issue Brief. The Defendant points out that the instant complaint raises a relatively narrow issue concerning its collection of the ITCC.⁴ PG&E asserts that Section I of Complainant's issue brief should be stricken because it attempts to reassert legal arguments litigated in C.10-02-026.⁵ PG&E also asserts that a portion of Section II of the Complainant's issue brief should be stricken as it attempts to raise a new issue, specifically Complainant's objection to the scope of an indemnity provision that is unrelated to and outside of the scope of the instant proceeding.⁶

Ms. Lawrence argues that the Scoping Memo in the instant proceeding contained a number of factual errors and that Section I is presented in order to

⁴ PG&E Motion to Strike at 1.

⁵ *Id* at 2.

⁶ *Id* at 3.

correct the record.⁷ Ms. Lawrence argues that the indemnity provision is part of the complaint because it is part of Exhibit A to the complaint and is part of the entire contract customers are required to sign by PG&E.⁸

We agree with the Defendant that Section I and a portion of Section II of the Complainant's Issue Brief are non-responsive and/or outside of the scope of the proceeding. The Defendant's motion is granted. Section I of Complaint's Issue Brief, all text from page 1 through page 8, is stricken from the record. The portion of Section II of Complaint's Issue Brief under the sub-heading "Indemnity Clause," on pages 9 and 10, is stricken from the record.

5. Standard for Ruling on a Motion to Dismiss

As noted earlier (*see* footnote 3 and accompanying text), Defendant requests that the Commission dismiss the complaint. In effect, the request is a Motion to Dismiss.

A Motion to Dismiss requires the Commission to determine whether the party bringing the motion prevails based solely on undisputed facts and matters of law. The Commission treats such motions as a court would treat motions for summary judgment in civil practice.⁹ A motion for summary adjudication is appropriate where the evidence presented indicates there are no triable issues as to any material fact and that the moving party is entitled to judgment as a matter

⁷ Lawrence Response to Motion to Strike at 2.

⁸ *Id* at 4.

⁹ Scoping Memo and Ruling of Assigned Commission on Motion to Dismiss and Preliminary Matters, at 3, in *Raw Bandwidth Communications, Inc. v. SBC California, Inc. and SBC Advanced Solutions, Inc.*, Case 03-05-023 (September 11, 2003), citing to *Westcom Long Distance, Inc. v. Pacific Bell et al.*, Decision (D.) 94-04-082, 54 CPUC2d 244, 249.

of law.¹⁰ The interpretation of a statute or regulation is generally seen to be a pure legal issue.¹¹

While there is no Commission rule expressly for summary judgment motions, the Commission's Rules of Practice and Procedure (Rules) include Rule 11.2,¹² which governs motions to dismiss. This procedure is analogous in several respects to a motion for summary judgment in civil practice.¹³ The Commission has explained that the purpose of both types of motions is to permit determination before hearing whether there are any triable issues as to any material fact.¹⁴ The Commission looks to California CCP, § 437(c) for the standards on which to decide a motion for summary judgment. Section 437(c) provides:

The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In determining whether the papers show that there is no triable issue as to any material fact the court shall consider all of the evidence set forth in the papers . . . and all inferences reasonably deducible from the evidence, except summary judgment shall not be granted by the court based on inferences reasonably deducible from the evidence,

¹⁰ Code of Civil Procedure (CCP), § 437c; Weil & Brown, Civil Procedure Before Trial, 10:26-27.

¹¹ See Manriquez v. Gourley, 105 Cal. App. 4th 1227, 1234-35 (2003), quoting from Culligan Water Conditioning v. State Bd. of Equalization, 17 Cal.3d 86, 93 (1976).

¹² All references to Rules are to the Commission's Rules of Practice and Procedure, which are available on the Commission's website.

Westcom Long Distance v. Pacific Bell, D.94-04-082, 54 CPUC2d 244, [249] (1994).
Id.

if contradicted by other inferences or evidence, which raise a triable issue as to any material fact.

C.C.P. §§ 437c(f)(1) and (2) provide for summary adjudication by an analogous procedure:

A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty....

A motion for summary adjudication shall proceed ... in all procedural respects as a motion for summary judgment.

A further purpose of such a motion is that it promotes and protects the administration of justice and expedites litigation by the elimination of needless trials.¹⁵ As such, where appropriate, the Commission regularly grants motions for summary judgment or summary adjudication.¹⁶ Initially, the moving party bears the burden of establishing evidentiary facts sufficient to prove or disprove the elements of a particular claim, and then the burden shifts to the opposing party to show a material issue of fact or an affirmative defense.¹⁷ As the Commission stated in D.06-08-006:

Under the summary judgment procedure, the moving party has the burden of showing that there are no disputed facts by means of "affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken." The opposition to the motion

¹⁵ Westcom Long Distance, supra, 54 CPUC2d at 249.

¹⁶ See D.07-07-040 (granting Chevron judgment against Equilon "as a matter of law"); D.07-01-004 (granting Cox Telecom judgment against Global NAPs of California); D.02-04-051 (granting summary adjudication of a claim by County Sanitation District against Southern California Edison Company).

¹⁷ C.C.P. §§ 437c(c), (f), (p).

must state which facts are still in dispute. The motion shall be granted if all the papers show that there is no triable issue as to any material fact and the moving party is entitled to judgment as a matter of law. If the parties' filings disclose the existence of a disputed issue of material fact, the motion must be denied.¹⁸

In Application (A.) 99-04-010, we reviewed our standards for dismissing complaints and applications:

On a motion to dismiss a complaint, the legal standard against which the sufficiency of the complaint is measured is whether, taking the well-pleaded factual allegations of the complaint as true, the defendant is entitled to prevail as a matter of law.¹⁹

In evaluating the sufficiency of a complainant's allegations, we are guided by the standards set forth in Public Utilities Code Section 1702 which provides that the complainant must: (a) allege that a regulated utility has engaged in an act or failed to perform an act; and (b) in violation of any law or commission order or rule:

Complaint may be made by the commission of its own motion or by any corporation or person, chamber of commerce, board of trade, labor organization, or any civic, commercial, mercantile, traffic, agricultural, or manufacturing association or organization, or anybody politic or municipal corporation, by written petition or complaint, setting forth any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation, of

¹⁹ E.g., MCI Telecommunications Corp. v. Pacific Bell, D.95-05-020, 59 Cal.P.U.C.2d 665, 1995 Cal.P.U.C. LEXIS 458, at *29-*30, citing Burke v. Yellow Cab Co. (1973) 76 Cal.P.U.C. 166.

¹⁸ Westcom Long Distance, supra, 54 CPUC2d at 249, quoted in D.06-08-006 Qwest Communications v. Pacific Bell.

any provision of law or of any order or rule of the commission.

The Commission will dismiss a complaint that fails to meet this two-pronged standard.²⁰ In addition, Commission Rule 4.2(a) requires that complaints be drafted with specificity so that the defendant and the Commission know precisely the nature of the wrong that defendant has allegedly committed, the injury, and the relief requested:

The specific act complained of shall be set forth in ordinary and concise language. The complaint shall be so drawn as to completely advise the defendant and the Commission of the facts constituting the grounds of the complaint, the injury complained of, and the exact relief which is desired.

With these standards in mind, we now examine the parties' responses to the scoping memo in order to determine if the Complainant has raised a legal question or any issue of material fact that demonstrates that the Defendant has engaged in an act or failed to perform an act in violation of any law or Commission order or rule. If not, then the Defendant is entitled to a judgment, dismissing the complaint, as a matter of law.

²⁰ See Monkarsh v. Southern California Gas Company, D.09-11-017, at 3 (November 24, 2009); Pacific Continental Textiles, Inc. vs. Southern California Edison Company, D.06-06-011, at 4 (June 15, 2006); Watkins v. MCI-Metro Access Transmission Services, D.05-03-007, at 4 (March 17, 2005); Rodriquez v. Pacific Gas and Electric Company, D.04-03-010, at 3-4 (March 16, 2004); AC Farms Sheerwood v. Southern California Edison Company, D.02-11-003 (November 7, 2002); and Crain v. Southern California Gas Company, D.00-07-045 (July 20, 2000).

6. Parties' Responses to Scoping Memo Issues

As previously noted, The Scoping Memo determined that there was one primary and one sub issue to be addressed in proceeding. We will now address the parties' responses to these issues:

1. Did the collection of the Income Tax Component of Contribution, by the Defendant from the Complainant, in connection with the relocation of the Complainant's electric service line, violate any Commission rule, statute, order or applicable tariff

PG&E asserts that its collection of ITCC for the relocation of the Complainant's electric service line was done in accordance with the Commission's decision in D.87-09-026 and PG&E's Electric Preliminary Statement J.²¹ PG&E points out that Commission's Order Instituting Investigation (I.) 86-11-019 (Tax OII) established the procedures for utilities to recover the federal tax imposed upon the contributions in aid of construction (CIAC) and advances for construction pursuant to the Tax Reform Act of 1986.²² PG&E states that the Commission's Decision in the Tax OII (D.87-09-026) authorized, as the principal method for recovering the tax, a method by which the contributor of the property or cash or the person making the advance pays the tax by paying the present value of the future tax burden.²³

PG&E states that its Electric Preliminary Statement Part J governs the recovery of the ITCC in conformance with D.87-09-026. Specifically PG&E states that Statement 1 of Preliminary Statement J provides all CIAC made to PG&E

²¹ PG&E Issue Brief at 2.

²² Id.

²³ PG&E Issue Brief at 5 citing 25 CPUC2d at 332.

shall include a charge to cover PG&E's estimated liability for state and federal income tax.²⁴ PG&E contends that Section 5 of Statement J identifies the applicable tax rate at 34 percent.²⁵

PG&E states that the Internal Revenue Service (IRS) has published an official bulletin to provide guidance to the treatment CIACs. PG&E points out, that in Internal Revenue Service Notice 87-82, the IRS recognized that relocation of utility facilities performed at the request of a customer to allow the development of a site would be treated as a CIAC and included in the utility's income.²⁶

PG&E argues that the Commission has applied and reaffirmed the policies reflected in the Tax OII with regard to the applicability of the ITCC to relocation payments to utilities. Citing the case of *Elbertse v. Southern California Edison*,²⁷ PG&E argues that the Commission reaffirmed the principal that utilities should collect the tax on all CIACs,²⁸ contained in the Tax OII. PG&E also cites the case of *Clark v. PG&E*.²⁹ In *Clark*, the Complainant argued that undergrounding an overhead electric line that conflicted with a construction of a home on the Complainant's property was more akin to a service extension than to new construction and should not be subject to the ITCC.³⁰ PG&E asserts that the

²⁴ *Id.* at 5.

²⁵ *Id*.

²⁶ *Id.* at 6.

²⁷ D.92-09-030, 45 CPUC2d 412.

²⁸ PG&E Issue Brief at 7.

²⁹ *Id.* at 8, citing D.91-05-052, 40 CPUC2d 460.

³⁰ *Id*.

Commission found that the project was not a service extension as the Complainant already had service on their property but was (instead) an elective replacement of a line for the benefit of the homeowner.³¹ PG&E states that the Commission determined that it is a long settled that the applicant seeking such a replacement must contribute to the costs as he is the person considered to have benefitted.³²

PG&E argues that, as in *Clark*, the Complainant in the instant case seeks to characterize the relocation of the existing electric line as comparable to a new service extension. PG&E states that relocation of the electric line on Ms. Lawrence's property was elective on her part and was done in order to accommodate a new workshop/garage on the property. PG&E argues that the line relocation resulted in a private benefit to Ms. Lawrence by allowing her to further develop her property.³³ PG&E states that consistent with the Commission's decision in the Tax OII, the guidance provided by IRS Notice 87-82, Electric Preliminary Statement J as well as the decision in *Clark*, it treated Ms. Lawrence's payment for the relocation work as CIAC that was subject to ITCC.³⁴

PG&E has indicated that after Ms. Lawrence had paid for the electric line relocation there was a change in the federal tax law. The change resulted in the ITCC tax factor being reduced to 22% from 34%, retroactive to January 1, 2010.³⁵

³¹ *Id*.

³² *Id.* at 8, citing D.91-05-052, 40 CPUC2d 460.

³³ PG&E Issue Brief at 9.

³⁴ PG&E Issue Brief at 9.

³⁵ *Id*.

As a result the Electric Preliminary Statement J was revised. PG&E states that it issued Ms. Lawrence a refund check of \$816.70 which represented the difference between the 34% ITCC that she had been charged and the 22% ITCC rate.³⁶ PG&E indicates that the refund check was never cashed.

Ms. Lawrence states in her brief that PG&E has violated Commission rules, statutes, orders or applicable tariffs.³⁷ In support of her contention, she references various Commission decisions and resolutions including D.87-09-026, Resolution G-3364, D.97-12-099 and D.86-11-019.³⁸ These references are made with little or no context or supporting argument.

2. Does Complainant have any standing to bring an action before the Commission on behalf of other PG&E customers who were subject to the Income Tax Component of Contribution?

PG&E asserts that the Complainant does not have standing to bring an action before the Commission on behalf of other PG&E customers who were subject of the ITCC. PG&E observes that the Complainant seeks to have the Commission order it to refund all ITCC payments received from customers,³⁹ as well as end the practice of collecting ITCC. PG&E argues that Ms. Lawrence fails to meet the statutory requirements for standing to petition the Commission for such a change.⁴⁰ PG&E asserts that Ms. Lawrence has not set forth anything done or omitted to be done in violation of any law or Commission order in

³⁶ *Id*.

³⁷ Complainant's Issue Brief at 15.

³⁸ *Id*.

³⁹ PG&E Issue Brief at 10.

⁴⁰ *Id*.

conformance to Public Utilities Code Section 1702.⁴¹ Further citing §1702, PG&E states that:

No complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, or telephone corporation, unless it is signed by the mayor or the president or chairman of the board of trustees or a majority of the council, commission, or other legislative body of the city or city and county within which the alleged violation occurred, or by not less than 25 actual or prospective consumers or purchasers of such gas, electricity, water, or telephone service.⁴²

PG&E asserts that Ms. Lawrence's complaint is not signed by the head of a local legislative body and does not include the signatures of 25 actual or prospective customers of PG&E. In addition PG&E argues that the instant proceeding is not the proper forum to for the Commission to consider whether or not to revise its Tariff relating to the ITCC.⁴³

Ms. Lawrence argues that she does have standing to bring an action before the Commission on behalf of other PG&E customers who were subject of the ITCC because PG&E has collected the ITCC money.⁴⁴ She states that if each customer brought their own individual complaint before the Commission it would deplete their resources and be duplicative.⁴⁵

⁴¹ PG&E Issue Brief at 10.

⁴² *Id.* at 11.

⁴³ *Id*.

⁴⁴ Complainant's Issue Brief at 16.

⁴⁵ Complainant's Issue Brief at 16.

7. Discussion

As evidenced by our granting of the Defendant's motion to strike, the vast majority of the Complainant's issue brief is non-responsive and/or outside of the scope of this proceeding. The primary issue in this proceeding is fairly narrow and straight forward; did the collection of the ITCC, by the Defendant from the Complainant, in connection with the relocation of the Complainant's electric service line, violate any Commission rule, statute, order or applicable tariff? PG&E has clearly and accurately citied the applicable Commission law, rules and decisions, as well as the applicable IRS rules and its own Commission approved tariff that support its collection of the ITCC. As PG&E has noted, the Commission determined in *Clark* that a customer seeking replacement of an existing line must contribute to the cost as they (the customer) are considered as having benefited from the line replacement.

Ms. Lawrence has not presented any valid statutory or legal argument to counter PG&E's evidence and assertions concerning the current settled status of this legal issue. Ms. Lawrence has not demonstrated that PG&E's collection of the ITCC in connection with the relocation of her electric service line violates any Commission rule, statute, order or applicable law.

On the sub-issue of whether Complainant has any standing to bring an action before the Commission on behalf of other PG&E customers who were subject to the ITCC, as PG&E points out, Public Utilities Code Section 1702 governs complaints concerning the reasonableness of any rates or charges of any gas, electrical, or telephone corporation. Section 1702 provides that no complaint shall be entertained by the Commission, except on its own motion... (or) unless it is signed by the mayor or the president or the chairman of the board of trustees or a majority of the council, commission or other legislative body of the city or

city and county within the alleged violation occurred or by not less than 25 actual or prospective consumers or purchasers of...electricity. The Complainant does not fit in to any of the above referenced categories nor does she have the signatures of 25 actual or prospective customers. We agree with the Defendant's contention that it would not be appropriate for the Commission, on its own motion, to use the instant proceeding as a vehicle to revise PG&E's tariff relating to the ITCC.

8. Conclusion

The Complainant has failed to demonstrate that the Defendant has engaged in any activity or violated any applicable rule, law or tariff of the Commission. The Complainant has failed to state a claim upon which relief can be granted. There is no disputed or triable issue of material fact before and/or under the Commission's jurisdiction in this proceeding. The Complainant's request for relief is denied and the case is dismissed. This proceeding is closed.

9. Categorization and Need for Hearing

This decision confirms the categorization of Case 11-04-018 as adjudicatory, as defined in Rule 1.3(a). It was anticipated that this proceeding would require evidentiary hearings. Because there is no disputed or triable issue of material fact before and/or under the Commission's jurisdiction in this preceding this complaint must be dismissed. The evidentiary determination is changed to state that no evidentiary hearings are necessary.

10. Comments on Proposed Decision

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's

Rules of Practice and Procedure. Comments were filed on March 4, 2013 by Ms. Lawrence, and reply comments were filed on March 11, 2013 by PG&E.

In her comments Ms. Lawrence contends that the Assigned ALJ erred in concluding that "there is not a dispute or triable issue of material fact and/or (law) under the Commission's jurisdiction in this proceeding".⁴⁶ In its comments PG&E argues that the primary issue in the instant complaint, as set forth in the scoping memo⁴⁷, was fully evaluated and addressed in the PD.

We conclude that in her comments, Ms. Lawrence is re-hashing arguments that were (or should have been) addressed in her brief. Ms. Lawrence's comments are factually and technically inadequate and deficient and in accordance with Rule 14.3 will be accorded no weight. No changes have been made to the PD.

11. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and W. Anthony Colbert is the assigned ALJ and Presiding Officer in this proceeding.

Findings of Fact

- 1. Complainant owns and resides at 138 Virginia Court, Alamo, California and is a customer of PG&E.
- 2. Defendant is a provider of electricity and natural gas service and is an investor-owned public utility under the jurisdiction of the Commission.

⁴⁶ Comments of Maria Lawrence to the PD at 1.

⁴⁷ Did the collection of the Income Tax Component of Contribution, by the Defendant from the Complainant, in connection with the relocation of the Complainant's electric service line, violate any Commission rule, statute, order or applicable tariff.

- 3. Complainant's home was built in 1978. She purchased it from the original owner in 1985.
- 4. In early 2005 Complainant planned to build a free standing garage and workshop structure south of her home.
- 5. In March 2005 Complainant submitted an application to PG&E to relocate her utility lines and paid PG&E an advance of \$1,000 required for engineering the job.
- 6. Complainant cancelled the contract with PG&E for relocation of its utility lines and deferred the project.
 - 7. In 2009 Complainant renewed her plans to build the workshop/garage.
- 8. The fee for the relocation of the electricity line was \$6,805.79 plus the ITCC of 34%, or \$2,313.97, for a total cost of \$9,119.
- 9. After Complainant had paid for the electric line relocation there was a change in the federal tax law. The change resulted in the ITCC tax factor being reduced to 22% from 34%, retroactive to January 1, 2010.
- 10. PG&E issued Ms. Lawrence a refund check of \$816.70 which represented the difference between the 34% ITCC that she had been charged and the new 22% ITCC rate. The check was not cashed.
- 11. Defendant has filed a motion to strike Section I and a portion of Section II of the Complainant's Issue Brief.
- 12. Section I and a portion of Section II of the Complainant's Issue Brief are non-responsive and/or outside of the scope of the proceeding.
- 13. Complainant demands that: Defendant refund her \$2,313.97 for the ITCC it has collected from her; refund all moneys received from other customers for ITCC or produce all records of the customers charged pursuant to the ITCC in order to determine if the charges were correct and applicable; pay a substantial

fine for charging customers under the ITCC and have the Commission require Defendant to end its ITCC billing practices/tariff.

- 14. PG&E asserts that it has not violated any law or rule of the Commission and that the complaint fails to state a claim upon which relief can be granted.
- 15. PG&E requests that the Commission deny the relief sought by Ms. Lawrence and dismiss the Complaint.
- 16. There is no disputed or triable issue of material fact within the Commission's jurisdiction in this proceeding.

Conclusions of Law

- 1. Defendant's motion to strike Section I and a portion of Section II of the Complainant's Issue Brief should be granted.
- 2. PG&E's collection of ITCC for the relocation of the Complainant's electric service line was done in accordance with the Commission's decision in D.87-09-026 and PG&E's Electric Preliminary Statement J.
- 3. In Internal Revenue Service Notice 87-82, the IRS recognized that relocation of utility facilities performed at the request of a customer to allow the development of a site would be treated as a CIAC and included in the utility's income.
- 4. Public Utilities Code Section 1702 governs complaints concerning the reasonableness of any rates or charges of any gas, electrical, or telephone corporation.
- 5. Complainant does not fit in to any of the categories referenced under Public Utilities Code Section 1702 nor does she have the signatures of 25 actual or prospective customers necessary to bring a complaint under the section on behalf of other customers.

- 6. PG&E should issue Ms. Lawrence a refund check of \$816.70 which represents the difference between the 34% ITCC that she has been charged and the current 22% ITCC rate
- 7. There is no disputed or triable issue of material fact before and/or under the Commission's jurisdiction in this proceeding.
 - 8. Hearings are not necessary.
- 9. Defendant's request to dismiss the Complaint will be treated as a Motion to Dismiss.
- 10. The Complaint against the Defendant should be dismissed, effective immediately.

ORDER

IT IS ORDERED that:

- 1. Pacific Gas and Electric Company's motion to strike Section I and a portion of Section II of Ms. Maria V. Lawrence's Issue Brief is granted.
- 2. Pacific Gas and Electric Company shall issue Ms. Maria V. Lawrence a refund check of \$816.70.
 - 3. The Complainant's request for relief is denied.
- 4. The complaint of Maria V. Lawrence against Pacific Gas and Electric Company is dismissed.
 - 5. The hearing determination is changed to no hearings necessary.

C.11-04-018 ALJ/WAC/sbf

PROPOSED DECISION (Rev. 1)

- 6. All Motions not previously ruled on are denied.
- 7. Case 11-04-018 is closed

This order is effective today.

Dated ______, at San Diego, California.